

Disciplinary and Other NASD Actions

REPORTED FOR MARCH

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2006.

Firm Fined, Individual Sanctioned

First Securities USA, Inc. (CRD #39986, Irvine, California) and Stanley Clifton Brooks (CRD #31684, Registered Principal, San Clemente, California) submitted a Letter of Acceptance, Waiver and Consent in which they were fined \$60,000, jointly and severally, and the firm was censured, while Brooks was suspended from association with any NASD member in any supervisory capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Brooks, violated the supervision rule by failing to commence and complete compliance inspections that were undertakings in the firm's membership agreement.

Brooks' suspension began on March 6, 2006, and will conclude at the close of business on March 5, 2008. (NASD Case #E0220030046-02)

Firms and Individuals Fined

Balfour Investors, Inc. (CRD #7382, New York, New York), Harry Isaac Freund (CRD #214182, Registered Principal, New York, New York) and Jay Sheldon Goldsmith (CRD #224459, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Freund and Goldsmith, conducted a securities business while failing to maintain the required minimum net capital. (NASD Case #E1020041022-01)

Certes Capital Securities, LLC (CRD #124392, Deerfield, Illinois), Dean Richard Hedeker (CRD #2068563, Registered Principal, Buffalo Grove, Illinois), and James Patrick Kozak (CRD #2237880, Registered Principal, Glenview, Illinois) submitted an Offer of Settlement in which they were censured and fined \$40,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hedeker and Kozak, violated the

registration provisions by permitting an individual to act in a capacity requiring registration when he was not registered. The findings stated that the firm, acting through Hedecker and Kozak, allowed the individual to exert control and/or direct certain of its operations, including participating in employment-related decisions and coordinating the firm's private placement offerings. The findings also stated that the firm, acting through Hedecker and Kozak, failed to amend the firm's Form BD to disclose the individual's role there and failed to supervise the associated unregistered individual. The findings further stated that the respondents engaged in violations in connection with two private placements by not properly escrowing funds and prematurely releasing funds before the minimums were met. **(NASD Case #C8A050023)**

Firms Fined

Advanced Equities, Inc. (CRD #35545, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to provide notification two business days prior to making capital withdrawals, when these withdrawals exceeded the aggregate amount as required by SEC Rule 15c3-1(e)(1). NASD also found that the firm failed to qualify and register an options principal, and failed to adequately and properly supervise the options activity conducted there. **(NASD Case #E8A2004000301)**

Coldstream Securities, Inc. (CRD #46835, Bellevue, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to adopt and implement an anti-money laundering (AML) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (BSA) and the regulations promulgated thereunder. **(NASD Case #E3B2004000801)**

Direct Access Brokerage Services, Inc. (CRD #30057, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the

allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly reported the "second leg" of NASDAQ National Market (NNM) riskless principal transactions to the Automated Confirmation Transaction SystemSM (ACTSM) for which it was not the firm with the obligation to report the trade. NASD found that the firm executed short sale transactions and failed to report them to ACT with a short sale modifier. NASD also found that the firm executed transactions based on a prior reference point in time, and failed to report each of these transactions to ACT with a prior reference point modifier. The findings also stated that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting for trades executed on a prior reference point. **(NASD Case #E8A2004013003)**

E*Trade Professional Trading, LLC (CRD #39293, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities traded on the Nasdaq Stock Market to the Order Audit Trail SystemSM (OATSSM) that were not in the NASD-prescribed electronic form, and the firm failed to repair them. The findings stated that the firm also failed to enforce its written supervisory procedures governing the repair and replacement of rejected OATS reports, and thereby failed to provide supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning OATS data transmission. **(NASD Case #20042000034-01)**

Ferris, Baker Watts Incorporated (CRD #285, Washington, District of Columbia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that its customer's resultant price was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to report the

correct price of the transaction in last sale reports of transactions in eligible securities through NASDAQ. The findings also included that the firm, when it acted as principal for its own account, failed to provide written notification disclosing the correct reported trade price to its customer. (NASD Case #20042000122-01)

Fimat USA, LLC (CRD #36118, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report Reportable Order Events (ROEs) to OATS. NASD found that the firm failed to enforce its written supervisory procedures that specified that the designated principal must conduct a daily review of the OATS Web site to ensure that all OATS files are accepted and to identify any late OATS reports. (NASD Case #20050006366-01)

First Hudson Financial Group, Inc., (CRD #32926, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000, required to pay \$7,792.75, plus interest, in restitution to public customers, and required to retain an independent consultant to review and make written recommendations for the firm's implementation of a supervisory system and procedures reasonably designed to ensure that charged commissions are fair, reasonable, not excessive and adequately disclosed to customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, while acting through a registered representative, it charged unreasonable and excessive option commissions on eight covered calls ranging from 5.3 percent to 54 percent. NASD found that the firm routinely charged its public customers commissions of less than 5 percent for equity securities and covering options purchases to close pre-existing option positions. In contrast, the firm, in certain instances, charged customers greater commissions, as high as 54 percent, for the sale of covered calls, particularly where the transactions were not part of a simultaneous buy-write strategy. The findings stated that the firm erred in treating the equity and options transactions as one transaction for the purposes of calculating and assessing the charged commission's appropriateness, particularly where the transactions were not part of a simultaneous buy-write strategy.

The findings also stated that the firm failed to have an adequate supervisory system in place to prevent and detect excessive commissions in options transactions. (NASD Case #E1020040299-01)

First Montauk Securities Corp. (CRD #13755, Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to implement and enforce a written AML program that was reasonably designed to achieve compliance with the requirements imposed by the BSA and the regulations promulgated thereunder. NASD found that the firm's equity transaction confirmations failed to indicate that it was a market maker in the security, and that the number of shares was inaccurate on another transaction. NASD also found that the order tickets the firm completed revealed deficiencies, in that they failed to identify the terms and conditions of the order, did not contain time stamps, contained an illegible time stamp, contained an execution time stamp that was subsequent to the trade report time, did not contain the customer account number or an execution price. The findings stated that the firm reported transactions in municipal securities to the MSRB that did not contain the correct trade time or correct price. The findings also stated that the firm reported to the Trade Reporting and Compliance Engine (TRACE) TRACE-eligible securities transactions with the following deficiencies: incorrect prices, late reporting, incorrect execution times, incorrectly reported as customer trades, reported with an incorrect volume, reported when in fact no such trade had taken place, and failed to report a cancelled transaction. In addition, the findings stated that the firm's supervisory system and written procedures were not reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning TRACE reporting. (NASD Case #E9B2005005003)

Freedom Investments, Inc. (CRD #37674, Edison, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to conduct an independent test of its AML program, and failed to have written procedures to address the firm's obligation to

provide prompt notification to NASD regarding changes to their AML contact information. NASD also found that the firm failed to enforce its Suspicious Activity Reports (SARs) procedures, in that the firm rejected at least seven questionable transactions involving ACH deposit requests which were classified as “fraudulent” on its internal books and records. The firm subsequently restricted and closed the accounts but never filed SARs for these transactions. The findings also stated that the firm improperly extended credit in violation of Reg. T, by failing to promptly cancel or liquidate the transactions in cash accounts where customers had used ACH deposits to pay for securities transactions, but their deposits failed to clear. **(NASD Case #E9B2004004401)**

GFI Securities, LLC (CRD #19982, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in Consolidated Quotation Services (CQS) through NASDAQ, and failed to designate some last sale reports as late. **(NASD Case #20050000636-01)**

J.P. Morgan Securities Inc. (CRD #18718, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$115,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning ACT reporting and trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted last sale reports of transactions in NNM securities through ACT and failed to designate them as reflecting a price different from the current market when the execution was based on a prior reference point in time. The findings stated that the firm failed to report the correct symbol indicating whether the transaction was a “buy,” “sell” or “cross” in last sale reports of transactions in eligible securities through ACT. NASD found that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in eligible securities through ACT, and failed to designate them as late. The findings also stated that the firm failed to report the correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity to ACT. In addition, the

findings stated that the firm reported last sale reports of transactions in NNM securities, eligible securities through ACT and in OTC Equity securities that it was not required to report. NASD also found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning ACT reporting and trade reporting. **(NASD Case #20042000159-01)**

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$95,000, ordered to pay \$5,933.04, plus interest, in restitution to public customers and required to revise the firm’s written supervisory procedures regarding compliance with NASD Conduct Rule 2320. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in customer transactions, the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that its customers’ resultant prices were as favorable as possible under prevailing market conditions. The findings also stated that the firm double-reported a riskless principal execution, failed to report riskless principal trades correctly and failed to disclose the correct capacity on customer confirmations. The findings also included that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with NASD Conduct Rule 2320 with respect to its obligation to use reasonable diligence to ascertain the best inter-dealer market, and to buy or sell in such market so that its customers’ resultant price was as favorable as possible under prevailing market conditions. **(NASD Case #20042000082-01)**

Merrill Lynch, Pierce, Fenner & Smith, Inc. (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to reasonably and promptly respond to “red flags” raised by customer complaints, written communications and telephone conversations regarding possible use of discretion by a registered representative and failed to institute heightened supervisory procedures targeting possible use of discretion by the representative. **(NASD Case #E062002029302)**

Nationwide Securities, Inc. (CRD #11173, Newark, Delaware) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,750. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it filed Uniform Termination Notices for Securities Industry Registration (Form U5) late, and failed to timely amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Forms U5. The findings also stated that the firm failed to prepare adequate written supervisory procedures associated with Forms U4 and U5 filing requirements. NASD also found that the firm failed to timely file 3070 reports. (NASD Case #E8A200540145)

Neuberger Berman, LLC (CRD #2908, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, for inclusion on the Consolidated Tape, it reported a last sale report of a transaction in an eligible security that resulted from a private offering after normal market hours that the firm was not required to report. The findings stated that the firm failed to report through NASDAQ the correct symbol indicating whether the transaction was a "buy," "sell" or "cross." The findings also stated that the firm failed to report the correct symbol indicating whether it executed the transaction in a principal or agency capacity. (NASD Case #20050000876-01)

Newbridge Securities Corporation (CRD #104065, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly

formatted data in that the reports omitted the "Not Held" indicator, omitted the order route reports, or failed to match a NASDAQ trade report. NASD also found that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC Equity securities through NASDAQ, and failed to designate some as late. The findings also included that the firm executed riskless principal transactions in OTC Equity securities and reported to NASDAQ that it executed the transactions in a principal only capacity, without submitting separate clearing only, or non-tape, non-clearing reports with capacity indicators of "riskless principal." (NASD Case #20042000065-01)

Oppenheimer & Co. Inc. (CRD #249, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file an MSRB Form G-36 and an official statement for three underwritings to the MSRB in a timely manner. The findings also stated that the firm filed inaccurate MSRB Forms G-37 and failed to submit information in writing on consulting arrangements to issuers with which it was seeking municipal securities business. (NASD Case #E102003017701)

Smith, Moore & Co. (CRD #3441, Clayton, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations concerning short-interest reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report its short-interest positions in various securities to NASD. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning short-interest reporting. (NASD Case #20042000040-01)

Spencer Edwards, Inc. (CRD #22067, Englewood, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting.

In light of the firm's financial status, NASD imposed a \$10,000 fine. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC Equity securities through ACT, and failed to designate them as late. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning trade reporting. NASD found that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC Equity securities to NASDAQ, and failed to designate them as late. **(NASD Case #20042000139-01)**

State Farm VP Management Corp. (CRD #43036, Bloomington, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$133,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely file a Form U5 for individuals whose registrations were terminated. NASD found that the firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules to ensure the timely filing of Forms U5. **(NASD Case #E8A2005019201)**

Westcap Securities, Inc. (CRD #45250, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the BSA and the regulations promulgated thereunder, in that the firm's program failed to have procedures to (1) perform customer identification, (2) independently test the AML compliance program and (3) document ongoing training. NASD also found that Westcap failed to implement procedures to adequately monitor and detect suspicious activity. **(NASD Case #E0220050170-02)**

Westminster Securities Corporation (CRD #6105, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning maintaining two-sided quotations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain continuous two-sided quotations with respect to securities in the absence of the grant of an excused withdrawal or a functional excused withdrawal by NASD. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning maintaining two-sided quotations. **(NASD Case #20042000131-01)**

Wharton Equity Corporation (CRD #10170, Wayne, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its written AML program was not reasonably designed to achieve compliance with the BSA and the regulations promulgated thereunder. **(NASD Case #E9A2005013302)**

Wolfe & Hurst Bond Brokers Inc. (CRD #8288, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE reporting. **(NASD Case #20050001505-01)**

Individuals Barred or Suspended

Marco Alfonsi (CRD #2770342, Registered Principal, Hicksville, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in all principal capacities for one year. Without admitting or denying the allegations, Alfonsi consented to the described sanctions and to the entry of findings that he failed to establish and maintain a supervisory system and written supervisory procedures for his member firm that were reasonably designed to achieve compliance with the applicable securities laws, regulations and NASD rules. Specifically, Alfonsi failed to establish a system to ensure that the firm maintained correspondence and internal communications, complete customer complaint files and customer new account information. Also, NASD found that Alfonsi failed to ensure that the firm filed customer complaints in a timely manner under NASD Rule 3070 and to ensure that Forms U5 were timely amended.

Alfonsi's suspension began on February 21, 2006, and will conclude at the close of business on February 20, 2007. (NASD Case #E072004010401)

Patrick Alexander Anthony (CRD #2080102, Registered Principal, Los Angeles, California) submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in any capacity for two years, barred from association with any NASD member in any principal capacity and required to pay \$77,400, plus interest, in restitution to public customers. Satisfactory proof of restitution payment must be made before Anthony reassociates with any NASD member. Without admitting or denying the allegations, Anthony consented to the described sanctions and to the entry of findings that he, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices, or schemes to defraud, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances by making material

misrepresentations and omissions in offers and sales of debt securities of an issuer, for which he was the sole officer, director and shareholder.

Anthony's suspension began on February 6, 2006, and will conclude at the close of business on February 5, 2008. (NASD Case #E0720031136-02)

Bradley Allan Bervert (CRD #2563245, Registered Principal, Overland Park, Kansas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bervert consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. (NASD Case #E0420040290-01)

Prashant Biraj Bhuyan (CRD #4201934, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$5,000 and suspended from association with any NASD member in any capacity for six months. In light of Bhuyan's financial status, the imposed fine is \$5,000, and it must be paid before Bhuyan reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Bhuyan consented to the described sanctions and to the entry of findings that he executed short sale transactions in a security listed on a national securities exchange at or below the current inside bid when the current inside bid was below the preceding inside bid on the security. The findings also stated that Bhuyan executed short sale orders and failed to properly mark the order tickets for those orders as short. The findings also included that Bhuyan executed short sale orders in a security and, for each order, failed to make an affirmative determination that he would receive delivery of the security on the customer's behalf or that he could borrow the security on the customer's behalf for delivery by the settlement date.

Bhuyan's suspension began on March 6, 2006, and will conclude at the close of business on September 5, 2006. (NASD Case #20050000026-01)

Matthew Gregory Blackburn (CRD #4627265, Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity

for 60 days. The fine must be paid before Blackburn reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Blackburn consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on an IRA 1035 transfer form without the customer's knowledge and consent, and sent the form to his member firm's home office for processing.

Blackburn's suspension began on March 6, 2006, and will conclude at the close of business on May 4, 2006. (NASD Case #2005000387601)

Gerald Arthur Brookshire (CRD #4709592, Registered Principal, Eagle, Idaho) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brookshire consented to the described sanction and to the entry of findings that he prepared and submitted forged life insurance policy applications to an insurance company on a customer's behalf without the customer's knowledge, consent or authorization. (NASD Case #E3B20040210-01)

Saverio Cataldo (CRD #2746819, Registered Representative, Seaford, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for nine months. In light of Cataldo's financial status, the sanctions do not include a monetary fine, restitution or disgorgement. Without admitting or denying the allegations, Cataldo consented to the described sanction and to the entry of findings that he directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices, or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances by excessively trading the customer's account. The findings also stated that Cataldo recommended and effected securities transactions in the account of a public

customer that were unsuitable for the customer in view of the size and frequency of the transactions, the nature of the account and the customer's financial situation, investment objectives and needs. NASD also found that Cataldo's suitability violations include use of margins that was inappropriate for the customer.

Cataldo's suspension began on February 21, 2006, and will conclude at the close of business on November 20, 2006. (NASD Case #E9B2003032501)

James Willard Clark (CRD #1225726, Registered Principal, Frisco, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any principal or supervisory capacity for 30 days. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative's offers and sales of securities that were unsuitable for the customer because they were, among other things, inconsistent with the customer's objectives. NASD also found that Clark failed to supervise the registered representative's unsuitable sale of a variable annuity to a public customer.

Clark's suspension began on February 6, 2006, and concluded at the close of business on March 7, 2006. (NASD Case #E062003043402)

Frank Collins (CRD #1942411, Registered Principal, Seaford, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanction and to the entry of findings that he did not promptly perform his supervisory responsibilities, altered the dates of the firm's mutual fund exception reports and added inaccurate information to surveillance reports. The findings stated that Collins failed to disclose the alterations to the exception reports to his member firm and as a result, caused the firm to provide NASD with inaccurate information. (NASD Case #E0220030854-02)

Colin Price Collea (CRD #1519299, Registered Representative, Littleton, Colorado) was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Collea reassociates with any NASD

member following the suspension, or before he requests relief from any statutory disqualification. The sanctions were based on findings that Collea made material misrepresentations to public customers in connection with Callable Certificate of Deposit offers and sales.

Collea's suspension began on February 2, 2006, and will conclude on February 2, 2008. **(NASD Case #C05050026)**

John Kent Colvin (CRD #2811349, Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Colvin consented to the described sanction and to the entry of findings that he engaged in private securities transactions for compensation without providing written notification to, or obtaining prior approval from, his member firm. **(NASD Case #C05050030)**

Melvin Conway (CRD #1257697, Registered Representative, Monroe, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Conway reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Conway consented to the described sanctions and to the entry of findings that he directed an unassociated person to forge a public customer's signature on forms necessary to effect the customer's authorized purchase.

Conway's suspension began on February 21, 2006, and will conclude on May 20, 2006. **(NASD Case #E052004032401)**

Richard Patrick Corl (CRD #3143352, Registered Principal, Bryn Mawr, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Corl consented to the described sanction and to the entry of findings that he obtained a \$15,090 check payable to an affiliate company of his member firm, endorsed the check, deposited the funds into his personal account and converted them for his personal use and benefit without authorization. **(NASD Case #2005003236401)**

James Daniel David (CRD #1644953, Registered Representative, Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before David reassociates with any NASD member following the suspension, or before he request relief from any statutory disqualification. Without admitting or denying the allegations, David consented to the described sanctions and to the entry of findings that he willfully misrepresented a material fact on a Form U4.

David's suspension began on February 21, 2006, and will conclude on May 20, 2006. **(NASD Case #E3B2004023201)**

Jatinder Dua (CRD #4523365, Registered Representative, Cockeysville, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dua consented to the described sanction and to the entry of findings that he forged a supervisor's signature on a letter containing an apology for providing false information, and sent it to a public customer without the supervisor's knowledge or authorization. The findings also stated that Dua failed to respond to NASD requests for information. **(NASD Case #2005002107001)**

Justin F. Ficken (CRD #4059611, Registered Representative, Boston, Massachusetts) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following an appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Ficken failed to appear for an NASD on-the-record interview.

This action has been appealed to the Securities and Exchange Commission (SEC), and all sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C11040006)**

Charles Edward Fleming (CRD #1447158, Registered Principal, Colleyville, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Fleming consented

to the described sanctions and to the entry of findings that, in order to effect a securities transaction for compensation, he signed public customers' names on an "Authorization to Transfer Fund" form.

Fleming's suspension began on February 6, 2006, and concluded at the close of business on March 7, 2006. (NASD Case #2005001076502)

Michael James France (CRD #3176408, Registered Representative, Cherry Hill, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before France reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, France consented to the described sanctions and to the entry of findings that he signed a Life Insurance Company Fixed Annuity Application as having witnessed a public customer signing the application when in fact, he did not witness it.

France's suspension began on March 6, 2006, and will conclude at the close of business on March 17, 2006. (NASD Case #2005000090701)

Louis Joseph Galeotafiore, Jr. (CRD #216688, Registered Principal, Flushing, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member for 10 business days as a Financial and Operations Principal (FINOP). Without admitting or denying the allegations, Galeotafiore consented to the described sanctions and to the entry of findings that the firm, acting acting through Galeotafiore, conducted a securities business when the firm's net capital fell below the minimum amount required by SEC Rule 15c3-1. NASD found that his former member firm, acting through Galeotafiore, failed to prepare and file accurate FOCUS Reports.

Galeotafiore's suspension began on March 6, 2006, and will conclude at the close of business on March 17, 2006. (NASD Case #ELI20030464-03)

Thomas Charles Garretson (CRD #3028617, Registered Representative, Alta Loma, California) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any

NASD member in any capacity for 60 days. The fine must be paid before Garretson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Garretson consented to the described sanctions and to the entry of findings that, in connection with securities transactions in a public customer's account, he falsely indicated on the order memoranda that the transactions were unsolicited and placed a false date on a mutual fund switch form to indicate that the customer had signed it on or about the time of the subject transactions.

Garretson's suspension began on January 3, 2006, and concluded at the close of business on March 3, 2006. (NASD Case #C02050048/E0220030711-04)

Anthony J. Gaspero (ID #11021604, Unregistered Associated Person, Monee, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Gaspero consented to the described sanction and to the entry of findings that he engaged in securities business without being registered with NASD in any capacity. (NASD Case #C8A050023/E8A20030506)

Juliette Suzanne Gleason (CRD #1648485, Registered Principal, Duxbury, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$15,000, which includes a \$5,000 fine and \$10,000 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Gleason reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the allegations, Gleason consented to the described sanctions and to the entry of findings that she participated in private securities transactions for compensation without providing prior written notice to, and receiving prior written approval from, her member firm.

Gleason's suspension began on March 6, 2006, and will conclude at close of business on March 5, 2007. (NASD Case #E0220030722-01)

Diana Lynn Adkins Godwin (CRD #4138073, Registered Representative, Dagsboro, Delaware) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Godwin consented to the described sanction and to the entry of findings that she made unauthorized withdrawals totaling \$19,550 from public customers' bank accounts and converted these funds for her own use and benefit. **(NASD Case #2005003229001)**

Eric Matthew Grace (CRD #2240979, Registered Principal, Redondo Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Grace reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Grace consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Grace participated in private securities transactions and failed to provide prior written notice to, and receive prior written approval from, his member firm.

Grace's suspension began on March 6, 2006, and will conclude on March 5, 2007. **(NASD Case #E0220040695-01)**

Bruce Allan Hager (CRD #1358936, Registered Principal, Fargo, North Dakota) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hager consented to the described sanction and to the entry of findings that he participated in outside business activities for compensation without providing prompt written notice to his member firm. The findings stated that Hager provided misleading information to NASD. **(NASD Case #E0420040447-01)**

Jason James Hachtel (CRD #4421009, Registered Representative, Cottage Grove, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hachtel consented to the described

sanction and to the entry of findings that he forged public customers' signatures on new and updated investment advisory agreements in order to change the agent of record on the investment advisory accounts without the customers' knowledge or consent. **(NASD Case #20050012181-01)**

Brett Aaron Jurica (CRD #2535339, Registered Principal, Scottsdale, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on the findings that Jurica repeatedly misused a public customer's funds, in that he transferred funds and securities proceeds from the customer's accounts to an account he controlled for his own use and benefit without the customer's knowledge, authorization or consent. The findings stated that Jurica willfully failed to provide written notification to his member firm that he opened securities accounts at other broker-dealers, and failed to advise the other broker-dealers of his association with his member firm. The findings further stated that Jurica failed to respond to NASD requests for information. **(NASD Case #E3A2004031001)**

James Neal John (CRD #1593232, Registered Representative, Denton, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, John consented to the described sanction and to the entry of findings that he forged public customers' signatures on forms and submitted them to his member firm. **(NASD Case #2005002308401)**

Daniel Soohwan Kim (CRD #2598668, Registered Representative, Santa Ana, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kim consented to the described sanction and to the entry of findings that he converted \$150,000 from public customers' variable life insurance policy accounts for his own personal use. **(NASD Case #E0220040441-01)**

Rena Logan (CRD #3000154, Registered Representative, Union, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Logan

consented to the described sanctions and to the entry of findings that she settled a complaint with a public customer by paying the customer \$500 without her member firm's knowledge or approval.

Logan's suspension began on February 21, 2006, and will conclude at the close of business on April 20, 2006. (NASD Case 2005001788701)

Marc Alan Luxenberg (CRD #2091350, Registered Representative, Bellmore, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Luxenberg consented to the described sanction and to the entry of findings that he altered a registered representative's lapsed insurance license by changing the dates to falsely reflect proper state registration without the representative's knowledge, authorization or consent. (NASD Case #2005002187801)

Timothy Merrill Martin (CRD #2250279, Registered Representative, Dayton, Ohio) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martin consented to the described sanction and to the entry of findings that he obtained \$50,000 from a public customer for his own use and benefit even though his member firm prohibited its representatives from borrowing or accepting funds from customers. The findings also stated that Martin deposited the \$50,000 into the customer's checking account, prepared a \$50,000 check drawn on the customer's account payable to Martin's wife, which the customer signed, deposited the check into a bank account in his wife's name, and used the funds in the account for his benefit—not the customer's. The findings also included that Martin made a written entry in the customer's check register falsely identifying the \$50,000 check as payable to a company and not his wife. NASD found that Martin prepared and provided the customer with a promissory note to repay the \$50,000, but failed to adhere to the note's terms. (NASD Case #E8A2004045402/C8A050023)

Peter Frederick McKinnon (CRD #1584788, Registered Principal, Beaverton, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, McKinnon consented to the described sanction and to the entry of findings that he converted \$180,000 from public customers' accounts for his own personal use. The findings stated that McKinnon failed to respond to NASD requests for documents and information. (NASD Case #E3B20040159-01)

Chris Lamont Meacham (CRD #1366969, Registered Principal, Poway, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Meacham reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Meacham consented to the described sanctions and to the entry of findings that he failed to promptly amend his Form U4 to disclose material information.

Meacham's suspension began on March 6, 2006, and will conclude at the close of business on March 17, 2006. (NASD Case #20050017095-01)

Carlos Omar Medina (CRD #4078775, Registered Representative, North Miami Beach, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Medina consented to the described sanction and to the entry of findings that, in connection with the sale of an unregistered security, he falsified documents and acted unethically by knowingly providing false information to his member firm to deceive and mislead the firm while it was investigating the facts and circumstances of the unregistered security sale. (NASD Case #E072004088501)

Daniel Micaletti, Jr. (CRD #2895242, Associated Person, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Micaletti reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Micaletti consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Micaletti's suspension began on February 6, 2006, and concluded at the close of business on May 5, 2006. (NASD Case #2005001181101)

Raymond Jude Murphy (CRD #3278046, Registered Principal, Bloomfield, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,211.21, which included a disgorgement of \$211.21 in financial benefits received, suspended from association with any NASD member in any capacity for three months, and ordered to pay member firms \$1,526, plus interest, in restitution. The fine and restitution amounts must be paid before Murphy reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered one-share orders, through the NASDAQ National Market Execution System (NNMS) to market makers in NASDAQ securities, through his proprietary trading account at his member firm, at prices that he knew would receive an execution and improve, and were intended to improve each market maker's bid or offer in the subject security. The findings stated that Murphy knew that these market makers utilized proprietary trading systems that automatically updated their bids or offers to prices that were inferior to the National Best Bid and Offer (NBBO) if the market makers were quoting 100 shares with no reserve size and their quote was executed against a one-share order. The findings also included that immediately after receiving executions on the one-share orders in the subject securities which updated both the bid and offer, Murphy knowingly and intentionally entered larger orders on the other side of the market to buy and sell shares of securities in a firm proprietary trading account to receive a more favorably priced execution at the new inside bid or offer Murphy caused to be created. NASD found that Murphy was able to buy shares of securities at prices that were lower and sell shares of securities at prices that were higher than he would otherwise have been able to obtain.

Murphy's suspension began on March 6, 2006, and will conclude at the close of business on June 5, 2006. (NASD Case #20042000046-01)

Clyde Nakaoka (CRD #1033250, Registered Supervisor, Ontario, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be made before Nakaoka reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Nakaoka consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose a material fact.

Nakaoka's suspension began on January 3, 2006, and will conclude at the close of business on January 2, 2007. (NASD Case #2005002116901)

Cary Lancaster Olson (CRD #2435229, Registered Principal, Sparks, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Olson consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without obtaining their written authorization to exercise discretion, and his member firm's written acceptance of the accounts as discretionary.

Olson's suspension began on March 6, 2006, and will conclude at the close of business on April 5, 2006. (NASD Case #E0120040219-01)

Russell Palermo (CRD #4392276, Registered Representative, Huntley, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palermo consented to the described sanction and to the entry of findings that he received \$1,215 from public customers to purchase insurance, failed to apply the funds as directed by the customers, and, instead, used the funds to pay for his office expenses. The findings stated that Palermo failed to timely respond to NASD requests for information and documents. (NASD Case #2005000118401)

Nancy Lee Paquette (CRD #4320794, Registered Representative, Delafield, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Paquette consented to the described sanction and to the entry of findings that she engaged in a pattern of providing inaccurate, incomplete and misleading information to NASD, in correspondence and while under oath, that hindered an investigation and interfered with NASD's regulatory function. The findings stated that Paquette was being investigated for false life insurance policies she purportedly sold to a construction company's employees. **(NASD Case #E8A2004041101)**

Leonard Joseph Reiss (CRD #4335600, Registered Representative, Newton, Kansas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Reiss reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Reiss consented to the described sanctions and to the entry of findings that he borrowed \$10,000 from public customers in contravention of his member firm's written procedures prohibiting representatives from borrowing money from customers.

Reiss' suspension began on February 21, 2006, and will conclude at the close of business on April 3, 2006. **(NASD Case #20050023200-01)**

Justin Eric Rhodes (CRD #4218246, Registered Representative, Reardan, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of Rhodes' financial status, no monetary sanction has been imposed. Without admitting or denying the allegations, Rhodes consented to the described sanction and to the entry of findings that he engaged in a private securities transaction without prior written notice to, and approval from, his member firm.

Rhodes' suspension began on February 21, 2006, and will conclude on August 20, 2006. **(NASD Case #E3B2004016701)**

Aaron Talamayan Ronquillo (CRD #4952541, Associated Person, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ronquillo consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. **(NASD Case #20050019363-01)**

Pierre Samuel Rosa (CRD #1106083, Registered Representative, Newport News, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rosa consented to the described sanction and to the entry of findings that he received \$13,200 from a public customer for investment purposes, but did not invest the funds as agreed. He instead converted the funds for his own use and benefit. NASD found that, prompted by his member firm's investigation in connection with the funds he had converted, Rosa prepared a fictitious letter addressed to himself that the customer purportedly had sent to him regarding the customer's investment, forged the customer's signature and provided a copy to his member firm as if it was genuine. **(NASD Case #2005001923301)**

David Michael Rosenberg (CRD #2165342, Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rosenberg consented to the described sanction and to the entry of findings that he participated in private securities transactions without giving his member firm prior written notice of his intent to participate in such transactions and receiving approval for his participation. The findings stated that Rosenberg failed to respond to NASD requests for documents and information. **(NASD Case #E072004089701)**

Thomas Alfred Saunders (CRD #1362744, Registered Representative, Edgewater, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$30,000, ordered to disgorge \$100,000 received from a securities account, and suspended from association with any NASD member

in any capacity for one month. Without admitting or denying the allegations, Saunders consented to the described sanctions and to the entry of findings that he gave authority to a registered representative at another member firm to trade shares of a security for the account including the time, price and amount of the trades. Through the other registered representative, the securities account engaged in transactions by which it purchased shares of the security and then sold the shares within 18 seconds at a price above the purchase price so that the account received approximately \$100,000 in profits as a result. The findings also stated that Saunders did not know the identities of the contra parties to the transactions that were executed through the other member firm.

Saunders' suspension began on March 6, 2006, and concluded at the close of business on April 5, 2006. (NASD Case #20050000350-02)

John Paul Schaffer (CRD #2139493, Registered Principal, Hazlet, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schaffer consented to the described sanction and to the entry of findings that he converted \$74,000 from a public customer for his own use and benefit. The findings also stated that Schaffer failed to respond to NASD requests for information. (NASD Case #2005001551401)

Michael Ray Scheurich (CRD #2660521, Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five months. The fine must be paid before Scheurich reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Scheurich consented to the described sanctions and to the entry of findings that he settled a complaint directly with a public customer on the condition that the customer would retain Scheurich as the broker of record on her account, without informing his member firm. The findings stated that Scheurich guaranteed another public customer that her total account value would equal or exceed \$50,000, and that he would credit any deficiencies to the account.

Scheurich's suspension began on February 6, 2006, and will conclude at the close of business on July 5, 2006. (NASD Case #2005000163501)

Andrew Paul Schneider (CRD #2907279, Registered Representative, West Palm Beach, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Schneider engaged in outside business activities without providing prompt written notice to his member firm.

This action has been appealed to the SEC, and all sanctions are not in effect pending consideration of the appeal. (NASD Case #C10030088)

Blake Justin Shanaphy (CRD #3002887, Registered Representative, Hoboken, New Jersey) submitted an Offer of Settlement in which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 45 days and barred from participating in, directly or indirectly, any public offering or transaction involving a penny stock. Without admitting or denying the allegations, Shanaphy consented to the described sanctions and to the entry of findings that, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce, or by the mails, directly or indirectly, knowingly or recklessly, employed artifices, devices or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit upon any person. The findings stated that Shanaphy recommended securities transactions and failed to furnish and obtain from the customers, prior to effecting such transactions, a signed risk disclosure document, failed to disclose and to provide to customers the inside bid and offer quotation and failed to keep and preserve records of such disclosures as required by the penny stock rules.

Shanaphy's suspension began on February 21, 2006, and will conclude at close of business on April 6, 2006. (NASD Case #CMS040165)

Ernie Preston Simmons, III (CRD #4728166, Registered Representative, Lititz, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Simmons consented to the described sanction and to the entry of findings that, while impersonating a public customer, he contacted an outside brokerage firm by telephone and requested the liquidation of the customer's account at such firm without the customer's authorization to do so. **(NASD Case #2005002314501)**

Anthony Paul Spinello (CRD #1961645, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spinello consented to the described sanction and to the entry of findings that he converted \$127,950 from public customers without their knowledge, authorization or consent. The findings also stated that he failed to respond to NASD requests for information. **(NASD Case #2005001826001)**

Michael Adam Strulson (CRD #2677763, Registered Representative, Aston, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Strulson consented to the described sanctions and to the entry of findings that he signed public customers' names on account opening agreements without their knowledge or consent.

Strulson's suspension began on March 6, 2006, and will conclude at the close of business on June 5, 2006. **(NASD Case #E9A2004036901)**

Ronald Mark Sussman (CRD #1932062, Registered Representative, Falls Church, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sussman consented to the described sanction and to the entry of findings that he charged a personal expense to a business credit card his member firm had issued to him for business use only, and

submitted a written request for reimbursement of the expense, representing it as business-related when he knew it was not. **(NASD Case #2005002635301)**

Anthony Peter Valois (CRD #2868602, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, barred from association with any NASD member in any principal or supervisory capacity, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Valois consented to the described sanctions and to the entry of findings that he failed to reasonably supervise registered representatives' activities, and failed to enforce his member firm's written supervisory procedures regarding heightened representative supervision and the handling of customer complaints.

Valois' suspension began on March 6, 2006, and will conclude at the close of business on April 4, 2006. **(NASD Case #E062003011905)**

Carl Van der Merwe (CRD #2561896, Registered Principal, Selah, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Van der Merwe consented to the described sanction and to the entry of findings that he created false and inaccurate books and records by falsifying expense reports reflecting \$96,000 in personal and duplicate expenditures as legitimate business expenditures, and provided violative gifts and gratuities to municipal bond traders and other employees of municipal securities broker-dealer firms with whom he conducted business. **(NASD Case #EAF0301180001)**

Donald Glenn Veltman (CRD #4646050, Registered Representative, Belding, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Veltman consented to the described sanction and to the entry of findings that he received \$957 from a public customer for investment purposes and did not use the funds as the customer intended, thereby misusing the customer's funds. **(NASD Case #E8A20040944-01)**

Joseph David Wallwork (CRD #2833527, Registered Representative, Fairview, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallwork consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #2005000329601)**

John Alan Wood (CRD #2490737, Registered Supervisor, Macon, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Wood reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Wood consented to the described sanctions and to the entry of findings that he participated in outside business activities for compensation without providing written notice to his member firm.

Wood's suspension began on February 21, 2006, and will conclude on May 20, 2006. **(NASD Case #2005002268201)**

Individual Fined

James Geoffrey Morris (CRD #3075047, Registered Representative, Wyckoff, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$15,000. The fine must be paid before Morris reassociates with any NASD member, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he prepared and submitted research reports containing price targets, research ratings and/or research summaries to companies whose equity securities were the subjects of the respective research reports, before publication of the reports and without providing complete drafts of them to his member firm. NASD found that Morris published research reports he had prepared and that did not disclose the valuation methods used to determine price targets contained within. **(NASD Case #E1020020590-01)**

Decisions Issued

The following decisions have been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of February 3, 2006. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Charles James Cuozzo, Jr. (CRD #3123060, Registered Representative, Verona, New Jersey) was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The sanctions are based on findings that Cuozzo falsified information on customer annuity replacement forms on numerous occasions and forged a public customer's signature and initials without the customer's knowledge or consent.

The NAC has called this decision for review. The sanctions are therefore not in effect pending the consideration of the decision by the NAC. **(NASD Case #C9B050011)**

Dennis Todd Lloyd Gordon (CRD #1614614, Registered Principal, Rosenberg, Texas) and Sterling Scott Lee (CRD #1848950, Registered Principal, Austin, Texas) were barred from association with any NASD member in any capacity and ordered to pay \$22,657.40, plus interest, jointly and severally, in restitution to public customers. The sanctions were based on findings that Gordon and Lee permitted an unregistered individual who they knew, or should have known, was subject to a statutory disqualification to act as a member firm's principal for more than three years and for failing to disclose the individual's ownership or control of the firm to NASD. The findings stated that Gordon and Lee caused their member firm to charge markups in excess of 10 percent in transactions that were not fair and reasonable under the relevant circumstances nor disclosed in customer confirmations.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C06040027)**

Marylan Katherine Taylor (CRD #2263196, Registered Representative, Oval, Ohio) was barred by NASD in all capacities. The sanction was based on findings that Taylor falsified documents that included

completion certificates for continuing education courses, a beneficiary form change, and a Letter of Clearance and Certification from the Kentucky Department of Insurance and that Taylor failed to truthfully respond during an NASD on-the-record interview. NASD also found that Taylor failed to promptly amend her Form U4.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C8A050027)

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are adjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Daniel Forrest Barrett (CRD #1789580, Registered Representative, Irving, Texas) was named as a respondent in an NASD complaint alleging that he made recommendations to a public customer to purchase high-risk stocks that were unsuitable for the customer based on the customer's age, financial status, investment objective and risk tolerance. The complaint also alleges that Barrett failed to respond to NASD requests to appear for an on-the-record testimony. (NASD Case #E062003043403)

Alexander M. Williams (CRD #3046599, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he engaged in a level of trading in public customers' accounts that was excessive and unsuitable based on their financial circumstances and investment objectives. The complaint alleges that Williams received \$10,000 from a customer for investment purposes, but rather than invest all of the funds, he used \$6,000 for his own use and benefit without the customer's knowledge, authorization or consent. The complaint also alleges that Williams failed to respond to NASD requests for information. (NASD Case #E1020040687-01)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Morgan Wilshire Securities, Inc.
Westbury, NY
(January 30, 2006 to February 13, 2006)

Individual Barred Pursuant to NASD Rule 9552(h)

Jeffrey Marc Esposito, Sr.
Dallas, TX
(January 30, 2006)

Ellen Annette Guldenzopf
Portland, OR
(February 7, 2006)

Dennis Alvin Pearson, Jr.
San Diego, CA
(February 3, 2006)

Chris Michael Richardson
Sherwood, OR
(February 3, 2006)

Salvatore Michael Spadafora
Garden City, NY
(February 2, 2006)

Individual Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Dmitry Gorodetsky
Brooklyn, NY
(January 27, 2006)

Joel Ellis Moskowitz
Boca Raton, FL
(January 27, 2006)

Scott Alan Webster
Riverview, FL
(January 13, 2006)

Individuals Suspended Pursuant to NASD Rule 9552(d)

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Nathan Paul Araujo
West Palm Beach, FL
(January 17, 2006)

Fred Korahais
Glen Cove, NY
(January 17, 2006)

Peter Korahais
Glen Cove, NY
(January 17, 2006)

Sangam Ramesh Patel
San Jose, CA
(January 9, 2006)

Roy Roxton Smith, Jr.
Jonesboro, AR
(October 3, 2005)

Richard Wolfe Weinberg
Oxnard, CA
(February 6, 2006)

Emily Sun Wong
College Point, NY
(January 17, 2006)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Ellen Marie Aleshire
Antioch, IL
(February 22, 2006)

Marc Amato
Strongsville, OH
(February 28, 2006)

Gary Thomas Bolt
Myrtle Beach, SC
(January 19, 2006)

Wendy Purner Feldman
Rancho Santa Fe, CA
(February 9, 2006)

James Raymond Hamaker
Roanoke, TX
(February 22, 2006)

Paul Richard Hanson
Ft. Myers, FL
(January 19, 2006 to January 23, 2006)

Roderick Dylan Hudnell
Bartow, FL
(February 27, 2006)

Jeffrey Michael Hug
Aurora, CO
(January 19, 2006)

Phuong Lan Thi Huynh
San Deigo, CA
(February 9, 2006)

Sunny Michael Ikwue
Queens Village, NY
(January 18, 2006)

Shawn Michael Jeffcoat
Peidmont, OK
(January 10, 2006)

Stuart Neal Kingoff
Monsey, NY
(February 23, 2006)

Craig Leszczak
Hewlett, NY
(October 13, 2005 to February 6, 2006)

Robert Thomas Maloney
Buffalo, NY
(February 8, 2006)

Ronald Henry Mayfield
Spokane, WA
(February 8, 2006)

Todd Michael Newman
Royal Palm Beach, FL
(February 16, 2006)

Stephen Patrick
Atlanta, GA
(January 10, 2006)

Martin Harold Pesin
Nanuet, NY
(February 28, 2006)

Scott Michael Praizner
Sarasota, FL
(February 23, 2006)

Christopher Thomas Pyne
Philadelphia, PA
(February 13, 2006)

Jacqueline Quicksilver
Chesterfield, MO
(February 9, 2006)

Steve Paul Quinn
Littleton, CO
(January 19, 2006)

David Seth Samalin
Greenwich, CT
(February 22, 2006)

Walter Emil Weyrauch
Duluth, MN
(February 9, 2006)

Akhtar Uz Zaman
Aurora, IL
(January 17, 2006)

Sanford C. Bernstein & Co., Research Analyst Brad Hintz Fined \$550,000 for Violations of Research Analyst Conflict of Interest Rules

**Firm Developed Plan to Avoid Restriction on Stock
Sales by Analyst that Were Contrary to His
Published Recommendations**

NASD imposed a fine of \$350,000 against Sanford C. Bernstein & Co. LLC of New York and a fine of \$200,000 against Charles B. ("Brad") Hintz, one of the firm's research analysts, for violations of NASD's research analyst conflict of interest rules.

In its investigation, NASD found that Sanford Bernstein, a subsidiary of Alliance Capital Management L.P., had favorable ratings on Morgan Stanley and Lehman Brothers securities that remained in effect while its research analyst, Hintz, was selling his own shares in the two companies, a violation of NASD rules prohibiting trading contrary to an analyst's recommendation. Hintz also engaged in transactions in six securities held in a discretionary personal account that were contrary to his then-current recommendations.

The fines represent the largest NASD has imposed to date for violations of its new research analyst conflict of interest rules, which were first approved by the SEC on May 10, 2002 and went into effect beginning July 9, 2002.

"NASD's research analyst conflict of interest rules are designed to give customers confidence that analysts' stock recommendations are not biased due to any financial self-interest of the analyst," said James S. Shorris, Acting head of Enforcement. "Inconvenience or expense does not excuse non-compliance with NASD's rules against analysts trading contrary to their research recommendations."

NASD found that Hintz, a high profile analyst covering financial services companies, held a substantial amount of stock in Lehman Brothers and options to purchase stock in Morgan Stanley that he received as compensation when he served as the Chief Financial Officer and Treasurer, respectively, at those firms. Hintz's Morgan Stanley options were set to expire in January 2005. NASD found that Hintz wanted to sell his holdings in both companies to realize the substantial gain in the value of the securities and to diversify his portfolio. NASD rules, however, prohibit an analyst from

effecting stock transactions contrary to the analyst's current recommendations; Hintz had favorable ratings on both companies at the time.

In 2004, Sanford Bernstein—at Hintz's request—unsuccessfully sought an exemption from the rule prohibiting the sales, arguing that Hintz's circumstances constituted a "hardship" and that he should be allowed to sell his holdings. Thereafter, Sanford Bernstein developed a plan approved by the firm's legal and compliance department and senior management—that it believed would allow Hintz to sell his holdings in Morgan Stanley and Lehman Brothers without violating NASD rules. Under this plan, Hintz issued what were purported to be his "final" reports on Morgan Stanley and Lehman on Dec. 23, 2004. Those reports rated the two companies "outperform" (the firm's highest rating) and "market-perform," respectively, and purportedly "terminated" coverage, while indicating that Hintz intended to resume coverage in February 2005 after selling all of his holdings in both companies. The reports further stated that the only "alternative" open to Hintz to allow him to sell his stock was to "terminate" coverage. One of the reports emphasized Hintz's purported dilemma by quoting Joseph Heller's *Catch-22*: "That's some catch, that Catch-22." To the contrary, Hintz did not have to sell his holdings and could have continued to hold his Morgan Stanley and Lehman Brothers securities, using other funds to pay for the costs of exercising his Morgan Stanley options.

Sanford Bernstein's plan did not comply with NASD rules. There was no bona fide termination of coverage because the firm intended to resume coverage of both stocks shortly after Hintz's stock sales were complete. The investment recommendations on both companies therefore remained in force, despite the purported "termination," and the stock sales in January 2005 violated NASD rules.

NASD also found that Hintz violated NASD rules as a result of numerous stock transactions in a discretionary brokerage account maintained at a domestic trust company. Sanford Bernstein, which received copies of the account statements, failed to supervise the activity in the discretionary account with a view towards preventing the violations. The account held securities in six companies that Hintz covered. Between August 2002 and January 2004, Hintz's discretionary account engaged in 27 transactions in those securities that

were contrary to his ratings. Also, 39 transactions were executed in the account either 30 days before or five days after Hintz published a research report on the company, thus violating NASD rules prohibiting transactions during a proscribed blackout period. In addition, between August 2002 and December 2003, Sanford Bernstein and Hintz did not disclose his holdings in these six securities in 60 research reports, as required by NASD rules.

In connection with these settlements, Sanford Bernstein and Hintz neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Orders Diversified Investors Securities to Pay Over \$2.2 Million for Facilitating Market Timing

Firm Also Fined for Supervisory Breaches, Email Failures

NASD fined Diversified Investors Securities Corp. of Purchase, NY, \$1.3 million for facilitating impermissible market timing by certain institutional and other customers in its Diversified Investors International Equity Fund. The firm must also pay nearly \$950,000 in restitution to the fund.

The settlement—the latest in a series of NASD enforcement actions involving impermissible market timing—also resolves related charges regarding email retention failures and supervisory breaches.

"What is troubling in this case is that, after the fund's prospectus was amended to put new restrictions in place specifically to discourage market timing, Diversified selectively permitted certain customers to carry out hundreds of market timing exchanges," said James Shorris, NASD Senior Vice President and Acting Head of Enforcement. "That special privilege was never disclosed to the fund's other shareholders, who were restricted from making frequent share exchanges."

Diversified is the principal underwriter and distributor of the Diversified Investors family of mutual funds, which are designed for retirement investing. Prior to June 2003, certain registered representatives at Diversified were aware that two groups of accounts had been opened for the purpose of market timing and had entered into agreements with Diversified Investment Advisors, Inc., the funds' investment advisor

and Diversified's parent company. The agreements permitted the accounts to market time, subject to certain restrictions.

While these market timing agreements were in place, language was added to the fund's prospectus informing investors that the fund had established new procedures designed to discourage large volume exchange activity that had the potential to affect negatively the fund and its other shareholders. The prospectus further stated that, effective June 30, 2003, if a shareholder sold fund shares, the shareholder may not be permitted to exchange shares back into the fund for 90 days. NASD found that despite these new prospectus restrictions, Diversified permitted the two groups of accounts with market timing agreements to continue their market timing activity. These accounts engaged in approximately 400 market timing round trip exchanges, purchasing and selling shares valued at over \$160 million from July through October 2003—disregarding the new prospectus trading restrictions, and in certain instances exceeding the trading limitations in their original market timing agreements.

NASD also found that while the prospectus limitations were not applied to the two groups of accounts with market timing agreements, approximately 80 letters were sent by a Diversified registered representative to other identified market timers, including investors who purchased and sold as little as \$5,000 per trade. Those investors were warned to cease market timing activity and were informed of the new prospectus language restricting an investor who sold interests in the fund from exchanging shares back into the fund for 90 days. However, these investors were not told that the new exchange restrictions were not being applied to the two groups of accounts with market timing agreements.

NASD also found that from November 2000 to December 2003, Diversified did not have an adequate system for retaining email communications and failed to ensure that emails were retained in accordance with record-keeping rules.

In settling with NASD, Diversified neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

David Lerner Associates Suspended from Conducting New Business in Variable Annuities, Variable Life Insurance for 30 Days, Fined \$400,000 for Violations of New York State, NASD Regulations

Two Firm Principals Fined, Suspended for Supervision, Registration Violations

NASD fined Long Island, NY brokerage firm David Lerner Associates, Inc. \$400,000 and suspended the firm from engaging in any new variable life insurance or variable annuity business for 30 calendar days for engaging in replacement sales of variable life insurance and variable annuities that violated NASD and New York State rules. The suspension begins on March 20, 2006, and will conclude at the close of business on April 19, 2006.

NASD also fined and suspended two of the firm's principals. Martin Lerner, the firm's Executive Vice President of Sales, was suspended from acting in a supervisory capacity for 20 business days. Russell Moss, the firm's Assistant Vice President and Director of Insurance Services, was suspended in all capacities for 20 business days. Lerner and Moss were each held jointly and severally liable for \$25,000 of the fine against the firm. Both suspensions will begin on March 20, 2006, and will conclude at the close of business on April 17, 2006.

NASD found that between November 1998 and February 2004, David Lerner employees failed to comply with New York State Insurance Department Regulation 60 in connection with variable life insurance and variable annuity replacement sales. The regulation is aimed at ensuring that investors have full and clear information prior to making a decision to replace an existing insurance policy or annuity contract, and at reducing the opportunity for misrepresentations and incomplete comparisons in replacement situations. The circumvention of the New York State regulation also constitutes a violation of NASD rules requiring compliance with just and equitable principles of trade.

"New York's Regulation 60 is designed to protect investors from unsuitable recommendations by brokers to replace variable life and annuity contracts," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "It's intended to arm investors with the information they need about the

costs and other implications of making such replacements before their decision is final. The firm's routine circumvention of the regulation denied investors the required opportunities to fully consider and understand these important investment decisions."

Regulation 60 requires two separate interactions with a customer before a replacement can be completed. In step one, the customer is informed in writing—through a Definition of Replacement form—that a replacement is being considered. The customer must complete a Client Authorization form to allow the firm to collect information about the customer's existing life insurance policy or annuity contract, so that the customer will be able to make a meaningful comparison. Both forms must be signed and dated by the customer.

In step two, among other disclosures, the customer must be provided with a Disclosure Statement setting forth information comparing the old and new life insurance policies or annuity contracts, including the primary reason(s) for recommending the new policy or contract and the reason(s) why the existing policy or contract can no longer meet the applicant's objectives. The customer must sign and date an acknowledgement stating that the customer received and read the completed Disclosure Statement before signing the application for the new annuity contract or life insurance policy.

NASD's investigation showed that David Lerner's employees routinely circumvented the required Regulation 60 replacement process. NASD found that at their initial meetings with customers to discuss a potential variable life insurance or variable annuity replacement sale, the firm's employees routinely instructed customers to sign—but leave undated—all of the required step one and step two Regulation 60 documents. Subsequently, the David Lerner employees would forward the Regulation 60 documentation to an unregistered David Lerner employee in the firm's main office in Syosset, NY, who was responsible for processing all such paperwork.

That employee, with the knowledge of certain members of David Lerner management, routinely completed the required information on the pre-signed paperwork. This included filling in the necessary "Agent's Statement" on the Disclosure Statement, on which the representative

was required to list the primary reason(s) for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract could not meet the applicant's objectives. That employee completed the required Agent's Statement by consistently listing boilerplate information without having any direct knowledge or understanding of the reason for the proposed replacement in each particular case. Additionally, that employee, with the knowledge of certain members of the firm's management, routinely inserted fictitious dates on the pre-signed Regulation 60 documentation in order to create the false appearance that the required two-step procedure had been followed. The employee reviewed, completed, and processed all Regulation 60 documentation without any principal of the firm ever reviewing the documentation for compliance, as required by the regulation.

By having their clients during the initial meeting pre-sign undated and incomplete Regulation 60 documentation, David Lerner's sales force was in many instances able to effect variable life or variable annuity replacement sales before their clients ever received or reviewed the Regulation 60 documentation as completed by the unregistered employee at the firm's Syosset headquarters.

NASD found that during the relevant period, David Lerner effected at least 527 variable life insurance replacement sales to New York State residents and generated total revenue of more than \$3,431,000 from those sales. The firm also effected at least 259 variable annuity replacement sales to New York State residents and generated total revenue of more than \$1,372,000 from those sales during the relevant time period.

In addition to the Regulation 60 violations and related books and records violations, NASD also charged the firm, acting through Martin Lerner and Russell Moss, with failing to supervise the firm's sales force with a view towards preventing the Regulation 60 violations, as well as with registration violations for permitting Moss to function as a principal at the firm without being properly registered.

In concluding this settlement, David Lerner Associates, Lerner and Moss neither admitted nor denied the charges, but consented to the entry of NASD's findings.

David Lerner Associates was fined \$115,000 last September to settle charges of using misleading marketing materials with the public, including radio advertising, client seminars and other communications. In addition, the firm was ordered not to conduct any public seminars for 30 days. Earlier, NASD fined the firm \$100,000 for running improper sales contests to promote certain David Lerner proprietary mutual funds and selected variable annuity and variable life insurance products.